

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR MDL No.: 15-md-02666 (JNE/FLN)
WARMING PRODUCT LIABILITY
LITIGATION

This Document Relates To:

LEROY SUNDQUIST,

Plaintiff,

Civil Action No.: 17-CV-03547-JNE-FLN

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, Leroy Sundquist, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1124], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In August of 2015, Mr. Leroy Sundquist contacted undersigned counsel regarding an infection and subsequent treatment that he experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicated that a Bair Hugger device was used during the original surgery.
3. On August 3, 2017, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

4. Initial efforts to have Mr. Sundquist complete the Plaintiff Fact Sheet were complicated by the inability to contact the client.
5. On August 22, 2017, counsel learned that Mr. Sundquist had passed away on January 19, 2017.
6. A Suggestion of Death regarding the passing of Mr. Sundquist has recently been filed with the Court in compliance with PTO 23. [17-cv-03547, Dkt. 6].
7. Mrs. Katy Schmitz, the daughter of Mr. Sundquist, contacted Counsel on December 6, 2017. Mrs. Schmitz was unable to provide information necessary to complete the Plaintiff Fact Sheet at that time.
8. Further efforts to contact Mrs. Schmitz after that phone call to complete the Plaintiff Fact Sheet have been complicated by the inability to contact Mrs. Schmitz. Counsel for Plaintiff believe that additional time could allow them to contact Mrs. Schmitz and complete the Plaintiff Fact Sheet.
9. While counsel has diligently continued their attempts to contact Mrs. Schmitz for several months, those efforts have not been successful to date.
10. As a result, counsel has not been able to obtain the necessary information to complete the Plaintiff Fact Sheet for this claim.

Accordingly, undersigned counsel request that the current action not be dismissed with prejudice and that Mrs. Schmitz be given an additional sixty (60) days to contact counsel in order to provide the necessary information to cure any alleged deficiencies with the Plaintiff Fact Sheet and to continue the case on behalf of her father.

Dated: March 8, 2018

KENNEDY HODGES, LLP

By: /s/ David W. Hodges
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on March 8, 2018 a copy of the forgoing instrument was served on all parties via the Court's electronic filing system.

By: /s/ David W. Hodges
David W. Hodges